

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION



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COMMISSIONERS

KRISTIN K. MAYES, CHAIRMAN

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

NOV 12 P 4: 13 Arizona Corporation Commission

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IN THE MATTER OF THE FORMAL
COMPLAINT AGAINST MOHAVE
ELECTRIC COOPERATIVE, INC.
FILED BY ROGER AND DARLENE
CHANTEL.

DOCKET NO. E-01750A-09-0149

RESPONDENT'S MOTION TO COMPEL
INSPECTION OF PREMISES

Hearing set for January 20, 2010

Mohave Electric Cooperative, Inc. ("Mohave") moves to compel Complainant to allow the inspection of his "art work" Structure, based on the following Facts.

FACTS

1. In the summer of 2008, the Complainants started the construction of a concrete building (upon belief) on their property (the "Structure"). When asked by the Special Services Department Staff of Mohave County to apply for a building permit, the Chantels stated that the building was "art work" and refused to submit a building permit application.

2. Because of building code issues and other legitimate concerns, the Mohave County Zoning Department (the "County") issued a letter to Mohave on or about September 12, 2008 instructing Mohave to immediately de-energize the electric line directly over the Structure.

3. The Complainants filed an informal complaint against Mohave on or about September 30, 2008 (the "2008 Informal Complaint"). In response to, and as an absolution of the alleged wrongdoing against Mohave in the 2008 Informal Complaint,

1 Steven Olea prepared a report. A copy of Mr. Olea's November 5, 2008 report (the "Olea
2 Report") was attached to Mohave's Motion to Dismiss and is incorporated herein by
3 reference. The Olea Report exhaustively addressed all of the Complainants' allegations in
4 the 2008 Informal Complaint (which allegations continue in the 2009 Formal Complaint and
5 the Supplement).

6 4. The Olea Report further indicates the real issue resulting in the de-
7 energizing of the power line to the Complainants' property was an issue of construction
8 permitting between the Complainants and the County Planning and Zoning Department. The
9 Olea Report also notes that County personnel advised the Complainants that if they did not
10 dismantle the structure on their property, their electric service might require termination for
11 reasons the County articulated.

12 5. The Chantels never obtained a building permit for the 6,400 square foot
13 Structure.

14 6. Mohave has requested brief access to both the exterior and the interior of
15 the Chantels' Structure.

16 7. Mohave's counsel has made demand for the inspection of the premises
17 pursuant to Rule 37 of the Arizona Rules of Civil Procedure (see Exhibit A attached hereto).

18 8. The Chantels have denied inspection of the interior of the premises under
19 the pretext that the interior of the Structure is irrelevant (see Exhibit B attached hereto).

20 **DISCUSSION**

21 Procedural matters for administrative law hearings are governed by the Rules of
22 Civil Procedure, when not in conflict with other law or the rules of the Commission. A.A.C.
23 R14-3-101. Rule 34 of the Arizona Rules of Civil Procedure permits discovery in the form of
24 inspection of land and related purposes. Mohave desires to inspect both the interior and the
25

1 exterior of the Structure, along with the Chantels' premises (excluding the primary
2 residence).

3 The Chantels have contended in both their informal complaint and their formal
4 complaint that they had constructed artwork (the Structure) on their property and that the
5 Structure was designed to protect the Chantels and invitees from Mohave's transmission
6 lines. By so alleging, the Chantels have made the nature and use of the Structure a relevant
7 issue and the Structure is therefore subject to discovery through an inspection. Moreover,
8 Mohave believes that a cursory inspection of the entire area (excluding the residence) is
9 relevant for the purpose of determining whether the Chantels have misrepresented the use and
10 purpose of the Structure. If, through the inspection of the Structure and other areas of the
11 Chantels' property, Mohave is able to obtain evidence that the Structure is being used for
12 purposes other than what the Chantels have claimed ("artwork" and for protection from
13 Mohave's lines), Mohave is entitled to introduce such evidence for the discrediting and
14 impeachment of the Chantels' testimony.

15 Moreover, Mohave desires to have a member of the Special Services
16 Department of Mohave County (which handles building permit applications) participate in
17 the inspection to determine whether the Chantels have violated any building ordinances
18 through the construction of the Structure without a permit. Mohave also desires to make a
19 cursory inspection of the premises to determine if there are other underground facilities that
20 are used for storage facilities.

21 There is no prejudice or burden to the Chantels to permit the inspection of the
22 Structure or the premises.

23 **REQUEST**

24 Mohave requests the following as a discovery order:
25

1 1. The Chantels shall make the Structure and their premises available for
2 inspection for up to 30 minutes within ten (10) days from the date of any order of this Court;

3 2. Mohave can be accompanied by a building permit inspector of the
4 Mohave County Special Services Department;

5 3. Mohave and Mohave County shall be permitted to take photographs;

6 4. The Chantels shall not remove or disturb the current condition or usage
7 of the Structure and shall not remove any items currently in the Structure pending the
8 inspection;

9 5. Dismissal of the Chantels' complaint if they fail to comply with this
10 order; and
11

12 6. Such other and further relief as the Administrative Law Judge deems
13 appropriate and warranted under the circumstances.

14 DATED this 11th day of November, 2009.

15
16 CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

17
18 By: 

19 Michael A. Curtis

Larry K. Udall

20 501 East Thomas Road

Phoenix, Arizona 85012-3205

21 Attorneys for Mohave Electric
22 Cooperative, Inc.
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Docket Control
Arizona Corporation Commission
1200 West Washington
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Douglas Wigley, Esq.
Jonathan Dessaules
Dessaules Law Group
2700 North Central Avenue, Suite 1250
Phoenix, Arizona 85004-0001
(and via facsimile)

Mary Walker
1234-7-7-44-1 Channel 09 ACC Proceeding/Pleadings

1 AFFIDAVIT OF LEGAL COUNSEL

2 STATE OF ARIZONA)
3 County of Maricopa) ss.

4 I, Larry K. Udall, being first duly sworn, depose and state that I am legal
5 counsel for Mohave Electric Cooperative, Inc. I have prepared this affidavit for compliance
6 with Rule 37 in the submission of a request to compel discovery. I have been in
7 communication with Roger Chantel's legal counsel for many weeks for the purpose of
8 scheduling a date and time for the inspection of Mr. Chantel's artwork structure. Recently, I
9 have been advised that Mr. Chantel refuses to give access to the interior of his art work
10 structure. I believe that the structure is subject to inspection under Rule 34 of the Arizona
11 Rules of Civil Procedure for multiple reasons. First, Mr. Chantel has stated that the structure
12 is artwork and therefore is not subject to the requirement of a building permit under Mohave
13 County's code. If Mr. Chantel is actually using the building for any purpose, then such
14 information can be used for discrediting and impeachment purposes. Second, it is relevant for
15 the administrative law judge to know whether the structure is compliant with Mohave's
16 building code. Mr. Chantel refused to give Mohave County building inspectors any access to
17 his building and how Mr. Chantel is using his building goes to the issue of Mohave Electric's
18 concerns about the building's failure to maintain the industry clearance and its concern over
19 the structural integrity of the building. Finally, since Mr. Chantel has contended that Mohave
20 Electric's conduct was not reasonable, then access to the interior of the building will help to
21 establish whether, given the currently unknown construction practices used by Mr. Chantel,
22 the concerns held by both Mohave County and Mohave Electric for the public safety were
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1 well-founded. Mr. Chantel's attorney categorically refused to give access to the interior of the
2 building. I confirmed this in writing and stated the grounds for access.

3 DATED 11-10-09

4
5 *Larry K. Udall*
6 Affiant

7 SWORN AND SUBSCRIBED before me this 10th day of November, 2009 by
8 Larry K. Udall.

9
10 *Mary Walker*
11 Notary Public



12 F:\1234\7-7-44-1 Chantel 09 ACC Proceeding\Pleadings\Affidavit Counsel

EXHIBIT A

The Law Offices of
**CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.**

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Larry K. Udall
Anja K. Wendel
Michelle Swann

Of Counsel
Joseph F. Abate
Thomas A. Hine

REFER TO FILE NO. 1234-7-44-1

October 20, 2009

**CORRESPONDENCE SUBMITTED UNDER
RULE 37, ARIZONA RULES OF CIVIL PROCEDURE**

Via Email & US Mail
Doug Wigley, Esq.
Dessaules Law Group
2700 North Central Avenue, Suite 1250
Phoenix, Arizona 85004

Re: MEC adv. Chantel; Docket No. E-01750A-09-0149
Demand for Access to Chantel Structure

Dear Mr. Wigley:

As promised, we are making demand for immediate access to the Chantel structure (the "Structure"). We discussed this Rule 35 inspection with you last week and your client refused to give us access.

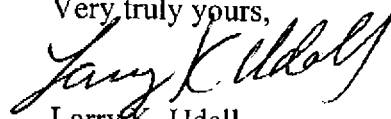
This is an appropriate discovery request for the following reasons. First, your client claims to have constructed the Structure for the purpose of protecting his family from the overhead Mohave Electric transmission lines. He has also claimed that the Structure is simply "art" and has no other function or use. Finally, your client has claimed that the Structure is not wired. An inspection will help us to determine the veracity of these statements.

Moreover, the sheer size of your client's building unquestionably brings it under the purview of Mohave County's building code. For this reason, it is appropriate to have a permit inspection from Mohave County briefly examine the building. In short, our request for access of up to 30 minutes is reasonable, unburdensome and without any imposition to your client because it is right on his premises.

Douglas Wigley, Esq.
October 20, 2009
Page 2

This correspondence constitutes a good faith effort to resolve this impasse. However, if, by the close of business this Thursday afternoon you have not provided reasonable dates and times for access to the Structure during the period of October 23rd to November 5th, we will immediately seek the involvement of the administrative law judge to resolve this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Larry K. Udall", written in a cursive style.

Larry K. Udall
For the Firm

LKU/maw

EXHIBIT B

DESSAULES LAW GROUP
Attorneys at Law

Jonathan A. Dessaules
Direct Line: 602.274.5400 ext. 101
jdessaules@dessaulslaw.com

October 29, 2009

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

Larry K. Udall
CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, P.L.C.
501 East Thomas Road
Phoenix, Arizona 85012-3205

Re: Mohave Electric Cooperative, Inc. ("MEC") Inspection Demand

Dear Mr. Udall:

We have reviewed your formal request to inspect the Chantels' artwork. Considering the nature of claims and defenses in this case, we do not oppose an inspection of the artwork's exterior (which seemingly could be done from the street). However, we do not see how the interior of the artwork is relevant or likely to lead to the discovery of admissible evidence. As your request does not indicate the purpose or reason for such detailed inspection, or indicate what will take place, we object to any such inspection beyond the exterior. Under the circumstances, the interior seems to be beyond the scope of relevancy in this case.

We also do not believe it is appropriate to invite non-parties to the inspection. You have indicated that you want to include Mohave County, a non-party, to the inspection. Rule 34(a) only applies to parties and we are aware of no rule that allows a party to bring non-parties or any legitimate reason for doing so in this case.

We are also concerned about the apparent one-way view of the discovery process. You did not answer, but simply lodged various inapplicable objections to, several of our First Set of Data Requests. While today we did receive most of the exhibits referenced in your Exhibit List, there are a number of Data Requests that remain unanswered. It is difficult for us to consider your request for inspection absent full and complete responses to the outstanding data requests. Specifically, but without limitation, we note the following deficiencies (a copy of your responses is enclosed):

- 1) Data Request 1.2: In your response, you referenced exhibit A – Mohave County's correspondence to MEC ordering MEC to immediately de-energize the line to the Chantels' residence. To date, this document has not been provided. Please provide the document that you reference.

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OCT 30 2009

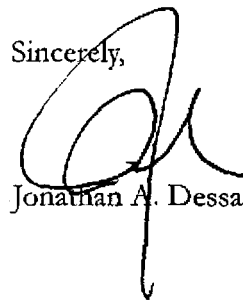
CURTIS, GOODWIN, SULLIVAN,
UDALL, & SCHWAB, PLC

October 29, 2009

- 2) Data Request 1.3: The information requested is relevant because the Chantels believe the old line is dangerous and information about its construction (when it was built, how it was built, and its technical specifications) would tend to prove or disprove the danger of such line.
- 3) Data Request 1.7: The information sought is relevant because the Chantels believe the old line is dangerous and information about any maintenance and/or repairs of this line, or lack thereof, would tend to prove or disprove the danger of such line.
- 4) Data Request 1.9: The information sought is relevant because the Chantels believe that MEC improperly de-energized the electricity to their residence and the railroad company that was receiving power from the same line may have had an improper influence on MEC's decision to de-energize the old line.
- 5) Data Request 1.11: Please supplement your disclosure with a response regarding the distance between the poles on the new line located south of the Chantels' property.
- 6) Data Request 1.12: The information sought is relevant because MEC has sent a bill to the Chantels. The documents may show that the amount of the invoice is excessive.
- 7) Data Request 1.13: The information sought is relevant to the extent that other recipients of electricity may have influenced MEC's decision to improperly de-energize the electricity to the Chantels' residence.
- 8) Data Request 1.15: The information sought concerns the dangerous condition of the old line and the evidence tends to prove that our clients' self-help in erecting the functional artwork was not unreasonable given MEC's unresponsive behavior toward the Chantels' numerous requests.

Thank you in advance for your prompt response to these data requests. Please give us a call if you would like to discuss our position concerning your inspection.

Sincerely,



Jonathan A. Dessales

Enclosure